

Department of Justice

§ 16.80

from the access provisions of subsection (d).

[Order No. 1-87, 52 FR 3631, Feb. 5, 1987]

§ 16.78 Exemption of the Special Counsel for Immigration-Related, Unfair Employment Practices Systems.

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (d).

(1) Central Index File and Associated Records, JUSTICE/OSC-001.

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries.

(2) From subsection (d) because access to the records might compromise ongoing investigations, reveal confidential informants, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation.

[Order No. 10-88, 53 FR 7735, Mar. 10, 1988]

§ 16.79 Exemption of Pardon Attorney Systems.

(a) The following systems of records are exempt from 5 U.S.C. 552a(d):

(1) Executive Clemency Files (JUSTICE/OPA-001).

(2) Freedom of Information/Privacy Acts (FOI/PA) Request File (JUSTICE/OPA-003).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(b) Exemption from subsection (d) is justified for the following reasons:

(1) Executive Clemency Files contain investigatory and evaluative reports relating to applicants for Executive clemency. The FOI/PA Request File contains copies of documents from the Executive Clemency Files which have

not been released either in whole or in part pursuant to certain provisions of the FOI/PA. Release of such information to the subject would jeopardize the integrity of the investigative process, invade the right of candid and confidential communications among officials concerned with recommending clemency decisions to the President, and disclose the identity of persons who furnished information to the Government under an express or implied promise that their identities would be held in confidence.

(2) The purpose of the creation and maintenance of the Executive Clemency Files is to enable the Pardon Attorney to prepare for the President's ultimate decisions on matters which are within the President's exclusive jurisdiction by reason of Article II, Section 2, Clause 1 of the Constitution, which commits pardons to the exclusive discretion of the President.

[Order No. 26-88, 53 FR 51542, Dec. 22, 1988]

§ 16.80 Exemption of Office of Professional Responsibility System—limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5) and (8), (f) and (g):

(1) Office of Professional Responsibility Record Index (JUSTICE/OPR-001).

These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because release of the disclosure accounting would enable the subject of an investigation to gain information concerning the existence, nature and scope of the investigation and seriously hamper law enforcement efforts.

(2) From subsections (c)(4), (d), (e)(4)(G) and (H), (f) and (g) because these provisions concern individual access to records and such access might compromise ongoing investigations, reveal confidential informants and constitute unwarranted invasions of the personal privacy of third persons who

provide information in connection with a particular investigation.

(3) From subsections (e)(1) and (5) because the collection of information during an investigation necessarily involves material pertaining to other persons or events which is appropriate in a thorough investigation, even though portions thereof are not ultimately connected to the person or event subject to the final action or recommendation of the Office of Professional Responsibility.

(4) From subsection (e)(2) because collecting the information from the subject would thwart the investigation by placing the subject on notice of the investigation.

(5) From subsections (e)(3) and (e)(8) because disclosure and notice would provide the subject with substantial information which could impede or compromise the investigation. For example, an investigatory subject occupying a supervisory position could, once made aware that a misconduct investigation was ongoing, put undue pressure on subordinates so as to preclude their cooperation with investigators.

[Order No. 58-81, 46 FR 3509, Jan. 15, 1981]

§ 16.81 Exemption of United States Attorneys Systems—limited access.

(a) The following systems of records are exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), (f), and (g):

(1) Citizen Complaint Files (JUSTICE/USA-003).

(2) Civil Case Files (JUSTICE/USA-005).

(3) Consumer Complaints (JUSTICE/USA-006).

(4) Criminal Case Files (JUSTICE/USA-007).

(5) Kline-District of Columbia and Maryland-Stock and Land Fraud Interrelationship Filing System (JUSTICE/USA-009).

(6) Major Crimes Division Investigative Files (JUSTICE/USA-010).

(7) Prosecutor's Management Information System (PROMIS) (JUSTICE/USA-011).

(8) United States Attorney, District of Columbia Superior Court Division, Criminal Files (JUSTICE/USA-013).

(9) Pre-trial Diversion Program Files (JUSTICE/USA-014).

These exemptions apply to the extent that information in these systems is subject to exemption pursuant to U.S.C. 552a(j)(2), (k)(1) and (k)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for these systems, would permit the subject of a criminal investigation and/or civil case or matter under investigation, litigation, regulatory or administrative review or action, to obtain valuable information concerning the nature of that investigation, case or matter and present a serious impediment to law enforcement or civil legal activities.

(2) From subsection (c)(4) since an exemption is being claimed for subsection (d), this subsection will not be applicable.

(3) From subsection (d) because access to the records contained in these systems would inform the subject of criminal investigation and/or civil investigation, matter or case of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection, apprehension or legal obligations, and present a serious impediment to law enforcement and other civil remedies.

(4) From subsection (e)(1) because in the course of criminal investigations and/or civil investigations, cases or matters, the U.S. Attorneys often obtain information concerning the violation of laws or civil obligations other than those relating to an active case or matter. In the interests of effective law enforcement and civil litigation, it is necessary that the U.S. Attorneys retain this information since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought within the U.S. Attorneys' offices.

(5) From subsection (e)(2) because in a criminal investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection,